



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 12, 2011

REPLY TO THE ATTENTION OF:

VIA EMAIL AND
FIRST CLASS MAIL

NCR Corporation
c/o Evan R. Chesler
Cravath, Swaine & Moore LLP
Worldwide Plaza, 825 Eighth Avenue
New York, NY 10019
E-mail: echesler@cravath.com

Appleton Papers Inc.
c/o Ronald R. Ragatz
De Witt Ross & Stevens, S.C.
Two East Mifflin Street – Suite 600
Madison, WI 53703-2865
E-mail: rrr@dewittross.com

Jeffrey T. Lawson, LLC Resident Manager
Project Control Companies, Inc.
20 Trafalgar Square
Nashua, NH 03063
E-Mail: JLawson@project-control.com

Terri L. Blackmar
Vice President, Great Lakes Operation
Tetra Tech EC, Inc.
1298 Lombardi Avenue
Green bay, WI 54304
E-Mail: Terri.Blackmar@tteci.com

Re: Notice to Designate Replacement Project Coordinator and Project Contractor and Notice to Submit Replacement 2011 RAWP and 2012 RAWP
Administrative Order for Remedial Action, Docket No. V-W-08-C-885
Lower Fox River and Green Bay Superfund Site, WI

Dear Sirs and Madam:

Under Section XV of EPA's Unilateral Administrative Order for Remedial Action for Operable Units 2-5 of the Lower Fox River and Green Bay Superfund Site (the "UAO"), EPA reserves the right to disapprove and require replacement of the Project Coordinator and contractors that have been designated to ensure performance of the remedial action work. EPA is electing to exercise that disapproval authority so that Site work will proceed in a manner consistent with the court's recent rulings in the government's enforcement lawsuit.

Since 2008, a Tetra Tech employee has been designated as the Phase 2B Remedial Action Project Coordinator for this cleanup project. This letter provides notice that EPA is disapproving that designation under UAO Section XV. That is not being done because Tetra Tech's employee is not professionally qualified to serve in that role, but because Tetra Tech is not directly accountable to NCR under the current LLC control structure. EPA is directing NCR to designate a replacement Project Coordinator who is directly accountable to NCR within 15 days, as required by UAO Section XV. Unless and until NCR gains a controlling voting interest in the Lower Fox River Remediation LLC (the "LLC"), NCR's newly-designated Project Coordinator cannot be a representative of the LLC or an employee of any contractor engaged by the LLC. EPA recognizes that the newly-designated Project Coordinator will need to work in

coordination with the LLC and its contractors in the near term as the LLC and its contractors (including Tetra Tech) continue to perform Site work in 2011.

NCR and the newly designated Project Coordinator must remedy the current non-compliance with UAO requirements. On March 4, 2011, EPA approved a modified *Phase 2B Work Plan for 2011 Remedial Action of Operable Units 2-5* ("2011 RAWP"). The Agency's approval required the incorporation of provisions that, if followed, would have resulted in full-scale sediment remediation at the Site throughout 2011, as required by the UAO. That has not occurred. The LLC submitted a non-conforming revised draft 2011 RAWP in late March and full-scale dredging was suspended in July. Full-scale dredging must resume immediately and continue throughout the 2011 construction season, as required by the UAO, either with the assistance of the LLC and its contractors or through alternate arrangements made by NCR. Within 21 days of the date of this letter, NCR also must submit a replacement 2011 RAWP that includes an overall plan and schedule for continued full-scale remediation work this year, though full-scale dredging work should resume before then.

NCR and its designated Project Coordinator also must begin making alternate arrangements for performance of the 2012 remedial action work. By this letter, EPA is giving notice that the Agency disapproves the performance of 2012 remediation work by contractors engaged by the LLC, except as necessary to ensure a smooth transition to a substitute contractor team to be designated by NCR. That contractor disapproval under UAO Section XV will take effect on October 15, 2011, and within 15 days after that NCR must identify the substitute contractors that will perform the 2012 remediation work. The substitute contractors designated by NCR may include any or all of the contractors that have performed work at the Site for the LLC if NCR certifies in its designation notice that: 1) NCR has the ability to direct and control the LLC's contractors because NCR has gained a controlling voting interest in the LLC; or 2) the contractors have been re-engaged in a manner that makes them directly accountable to NCR. Within 90 days after its new contractor designation, NCR must submit a draft 2012 Remedial Action Work Plan that includes a plan and schedule for full-scale dredging throughout the construction season, as required under the UAO and its Milestones and Deadlines Appendix (*i.e.*, by no later than January 31, 2012).

The new arrangements required by this letter should allow and encourage participation and funding by other potentially responsible parties because we know that the current LLC control structure has discouraged involvement by others. For example, some degree of involvement by Georgia-Pacific would clearly be appropriate because Georgia-Pacific owns the land where the Sediment Processing Facility is situated and the company has stipulated in its Consent Decree that it is liable, along with others, for required work in Lower OU 4.

EPA also intends to continue to press its legal claim for UAO enforcement against other UAO recipients, but a judgment on the merits of that claim cannot be expected before plans and contracts for the 2012 remedial action work need to be put in place. Thus, although a different work arrangement with more active involvement by other UAO recipients may be appropriate in the long term, NCR will need to take the lead role in implementing the work for now in light of the court's recent rulings in the government's enforcement case and the earlier rulings in the related contribution case.

If you have any questions regarding this letter, please have someone contact Richard Murawski, Associate Regional Counsel, at 312-886-6721.

Sincerely,



For Thomas R. Short
Remedial Response Branch #2

cc: James Hahnenberg, SR-6J
Lawrence Schmitt, SR-6J
Richard Murawski, C-14J
Douglas Dixon – OSRE
Randall Stone – U.S. Department of Justice
Beth Olson – Wisconsin DNR
Cynthia Hirsch – Wisconsin Department of Justice